IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION No. 15392 of 2004

Between:

A.S.R.K.L. Prasad, S/o Narasimha Rao,

Aged 25 years, Contract Labour,
K.T.P.S. - Vth Stage, R/o H.No. 10-136,

New Palvoncha, Khammam District.

..... PETITIONER

AND

1 The A.P. GENCO, Rep. by its Chief Engineer, O&M, KTPS,
Vth Stage, Paloncha, Khammam District.
2 The A.P. GENCO. rep. by its Chairman & Managing Director,
Vidyutsoudha, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in issuing Circular Memo No, CEE/O & M/KTPS-V/PO/ADM/F29E/D.No. 768/2004, dt. 29-7-2004, issued by the 1st respondent as highly illegal, arbitrary and contrary to the orders of this Hon'ble Court passed in C.C.No. 1527/2001 & Batch, dt. 18-4-2002 and set aside the same and consequently direct the respondents to appoint the petitioner as Sub-Engineer in the existing vacancies.

Counsel for the Petitioner: MR.N.M.KRISHNAIAH

Counsel for the Respondents: SMT.K.SESHARAJYAM

The Court at the admission stage made the following:

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ORDER:

The petitioner is contending that he is working as a contract labour in the respondent Board. In pursuance of a notification dated 02.01.1999 he appeared for the selection to the post of Sub-Engineers in the category of Electrical and Mechanical, but the respondents have appointed other candidates, without considering the case of the petitioner, on the basis of weightage given to those selected candidates. Some of the candidates have filed batch of writ petitions, and this Court directed the respondents to review the selection. When the direction of this Court was not implemented, contempt petitions have been filed before this Court, and this Court, through the order dated 18.04.2002, permitted the respondent Board to go ahead with the appointment orders as per the selection list dated 21.01.2002. But however, if any of the candidates who filed contempt petitions subsequent to the interim orders or final orders of this Court in the writ petitions, their names have to be deleted from the list and selected candidates who have filed contempt petitions with the leave of the Court after the disposal of the writ petition No.23439 of 1999 and batch and shall have to be kept in the selection list.

2. The petitioner contends that after the Judgment of this Court, the respondents have not taken any steps for implementation of the order, on the other hand, they invented a new method of filling up the post of Sub-Engineers, by accommodating the inservice candidates and in pursuance of that, the respondents issued a Circular dated 29.07.2004, notifying that the appointments by transfer of the inservice candidates would be taken up. He further contends that when the order of this Court was very clear that after exhausting the candidates from the merit list in the direct recruitment only, the respondents should go for the recruitment by transfer. Since the respondents did not take any steps for making appointment of direct recruits, and have resorted to go for appointment by transfer of the inservice candidates, the petitioner, therefore, approached this Court,

through this writ petition, seeking to declare that the Circular dated 29.07.2004 issued by the respondents for filling up posts of Sub-Engineers by appointment by transfer, as illegal, arbitrary and contrary to the service regulations and consequently, to direct the respondents to implement the directions, issued by this Court in CC.No.1527 of 2001 and batch.

3. The respondents are contending that the method of recruitment for the category of Sub-Engineers is in two ways, one is by direct recruitment, and another is by appointment by transfer. The learned counsel for the respondents drew the attention of this Court to B.P. (P&G-Per.) Ms.No.58, dated 06.05.1993 of the Andhra Pradesh State Electricity Board. As per the said order, the method of recruitment for the category of Sub-Engineer shall be (a) by direct, and (b) by appointment by transfer from among the categories, as mentioned in Para-2 (iii).

4. The learned counsel for the respondents submitted that since the second type of recruitment is also a direct recruitment by appointment by transfer and it is not a promotion, therefore, the respondents, after completing the process of the appointment by transfer, would take up the process by direct recruitment. She further submitted that since the appointment by transfer is also a form of recruitment, it should also be treated as the second category of direct recruitment. Therefore, the question of violation of the order of this Court in CC.No.1527 of 2001 does not arise.

5. The Order of this Court in CC.No.1527 of 2001 at page-4 reads as follows:

1. The Board is permitted to go ahead with the appointment orders as per the selection list, dated 21.01.2002. But, however, if any of the candidates who filed contempt cases subsequent to the interim orders or final orders of this Court in writ petitions, their names have to be deleted from the list and selected candidates who have filed contempt cases with the leave of the Court after the disposal of the writ petition No.23439 of 1999 and batch, shall have to be kept in the selection list.

2. The Board shall scrutinize the certificates, which were filed by the

petitioners pursuant to the orders of this Court, up to 04.02.2002 and prepare a merit list. The Board is also directed to consider their cases sympathetically to absorb them in preference to others for the post of Sub-Engineers and Plant Attendants as per their qualifications. As and when the Board goes for fresh recruitment, the Board shall appoint the petitioners on priority basis and then only it has to go for fresh recruitment.

6. After going through the order of the respondent Board and the order of this Court, it is clear that the appointment by transfer, cannot be treated as a direct recruitment, and as there is a specific direction from this Court that the appointment by transfer shall be made only after exhausting candidates from among the direct recruits, by preparing a merit list of such candidates.

7. In the light of the specific direction of this Court in the Order dated 18.04.2002 in CC.No.1527 of 2001, the Circular, issued by the respondents dated 29.07.2004, is liable to be quashed.

8. Accordingly, the Writ Petition is allowed. Circular dated 29.07.2004 issued by the respondents, is quashed. The respondent Board is directed to consider appointment of the candidates from the merit list and as per the direction of this Court given earlier in CC.No.1527 of 2001. After compliance of the direction of this Court only, the respondent Board is at liberty to go for recruitment by transfer.

dsr

ASSISTANT REGISTRAR

To:

1. The Chief Engineer, AP GENCO,

O & M, KTPS, Vth Stage,

Paloncha, Khammam District

2. The Chairman & Managing Director,

AP GENCO, Vidyutsoudha, Hyderabad

3. Two CD copies.